IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.898 of 2005
from
NOTICE OF MOTION NO. 2147 OF 2004
IN
MISCELLANEOUS PETITION NO. 58 OF 2001

Lav K.Chadha & ors .. Appellants

versus

SICOM Ltd .. Respondent

...

Mr.Naushad Engineer i/b M/s. Zohair & Co for the Appellant.

Mr.Kishore Jain a/w Mr.P.V.Shah for Respondent

CORAM : R.M. LODHA AND
D.G. KARNIK, JJ

DATED : 22nd November 2005.

P.C.:

Heard.

2. By the impugned order, the learned Motion Judge has dismissed the Notice of Motion taken out by the present appellant for setting aside the ex-parte order dated 29th August 2002.

3. The principal ground urged before us, as was

urged before the learned Motion Judge, is that the order of substituted service was obtained by the respondent - SICOM Limited by making mis-representation that the present appellants were avoiding service and that they reside at the address mentioned in the notice.

4. In the Miscellaneous Petition that was filed by SICOM Limited and registered as Miscellaneous Petition No.58 of 2001, the notices were issued to the present appellants at the address given by the appellants in the deeds of guarantee. Notices were sent to the appelants by registered post at that address since nobody was available at the time the postman went to deliver the registered cover, the intimation was left by postal authorities to collect the covers. However, the present appellants did not collect the registered covers. Though the service ought to have been treated as sufficient but the Court passed an order for serving the appellants by substituted service. The notices were published in the newspaper "Free Press Journal". Despite the publication of the notice in the newspaper, the appellants did not appear and the order dated 29th August 2003, came to be passed by the learned Judge.

5. That the notices by the registered post were sent to the appellants at the address viz. B-32, Ganga Bhavan, Versova, Andheri(West), Mumbai 400 061 is apparent from the record. This is the address of the appellants mentioned in the deed of guarantee executed by them. The deed of guarantee records that all the communication including the notice of demand sent by the certificate of posting at the said address shall be sufficient service of such communication or notice.

6. The plea of the appellants that there was no valid of service does not deserve to be accepted.

7. No interference in the impugned order is called for.

8. Appeal is dismissed in limine.

(R.M. LODHA, J)

(D.G. KARNIK, J)